

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEPH JAMES HARDING and RICHARD O. RATZEL

Appeal No. 1999-2099
Application No. 08/475,627

HEARD: April 19, 2000

Before CALVERT, Administrative Patent Judge, MCCANDLISH,
Senior Administrative Patent Judge, and PATE, Administrative
Patent Judge.

CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 to
22, all the claims in the application.

The appealed claims are drawn to a cushioning conversion

Appeal No. 1999-2099
Application No. 08/475,627

network which includes a plurality of cushioning conversion (dunnage) machines, and a method of allocating production of cushioning product between a plurality of such machines in a network. The appealed claims are reproduced in Appendix A of appellants' brief.

The prior art applied by the examiner in the final rejection is:¹

Hemming, Jr. et al 13, 1979 (Hemming)	4,174,237	Nov.
Nagai et al. (Nagai) 1991	5,008,842	Apr. 16,
Dietrich et al. (Dietrich) 1993	5,216,593	Jun. 1,
Kawamura et al. (Kawamura) 1993	5,252,899	Oct. 12,
Lobiondo 1994	5,287,194	Feb. 15,
Groenteman 1995	5,398,257	Mar. 14,

The prior art admitted by appellants on pages 3 to 5 of the specification (AAPA).

The claims on appeal stand finally rejected on the

¹ On page 3 of the examiner's answer, the examiner lists Ottaviano Pat. No. 4,619,635 as part of the prior art of record relied upon, but does not include it in any rejection.

Appeal No. 1999-2099
Application No. 08/475,627

following grounds:²

(1) Claims 1, 4 to 9 and 14, anticipated by AAPA under 35 U.S.C.102(b);³

(2) Claims 1 to 12, 14 to 16 and 18 to 22, unpatentable over AAPA in view of Groenteman, Kawamura, Dietrich or Lobiondo, under

35 U.S.C. § 103(a);

(3) Claims 13 and 17, unpatentable over AAPA in view of Groenteman, Kawamura, Dietrich or Lobiondo, further in view of Hemming or Nagai, under 35 U.S.C. § 103(a).

Rejection(1)

² The examiner also rejected claims 1 to 22 under § 112, second paragraph, and claims 4, 6 and 7 under § 112, first paragraph. Both rejections are deemed withdrawn, since (1) the examiner states on page 8 of the answer that the rejections of "claims 4-7" under § 112, first and second paragraphs are withdrawn, and (2) the rejection of claims 1 to 22 is not repeated in the examiner's answer. Ex parte Emm, 118 USPQ 180 (Board of Appeals 1957).

³ A rejection of claims 2 and 3 on this ground in the final rejection is withdrawn on page 10 of the examiner's answer.

On page 5 of the specification, lines 3 to 17, appellants disclose (emphasis added):

Due to the increased popularity of paper protective packaging material, manufacturers often employ a plurality of cushioning dunnage conversion machines with preset parameters to produce protective packaging for articles of different sizes and shapes. This arrangement often reduces setup time and allows a manufacturer to produce and ship out goods in a minimal amount of time. In addition, manufacturers now incorporate programmed controllers to control the operation of cushioning dunnage conversion machines. These controllers result in reduced manpower, more uniform products, lower production costs, less error, and a safer working environment.

its The controllers operate by continuously monitoring [sic] respective machine through employment of sensing circuits connected to the machine, which provide output signals to a pre-programmed processor to control the respective machine according to the manufacturer's specifications. Each different machine typically has a respective independent controller unique to that particular machine. Employing a different controller for each machine type often results in increased manufacturing costs and chances of error in manufacture, and complicates replacement and repair.

The examiner, noting the reference to a pre-programmed processor in the underlined portion of the foregoing, asserts that this constitutes a disclosure of plural controllers (one on each machine) sending output signals to a single processor, so that "each of the machines are [sic] in communication with

the processor which is in turn in communication with all of the machines" (answer, page 4). From this, the examiner concludes that one of ordinary skill "would readily recognize that such an arrangement inherently constitutes a control network of machines in communication with each other" (id., pages 4 to 5). Appellants disagree with the examiner's interpretation of the specification.

After fully considering the record in light of the arguments presented in appellants' brief and reply brief, and in the examiner's answer, we conclude that the AAPA does not anticipate the network recited in rejected independent claims 1, 4, 5 and 6, and thus does not anticipate any of the claims included in rejection (1). Contrary to the examiner, we do not interpret the above-quoted language from page 5 of the specification as disclosing that the controllers on each of the machines all provide signals to single pre-programmed processor, but rather, taken in context, that each controller provides output signals to a separate pre-programmed processor. This is brought out by the disclosure at page 5, line 13 that the processor controls "the respective machine," and by the further disclosure at page 5, lines 14 and 15, that

each machine "typically has a respective independent controller." Moreover, it is not apparent why appellants would consider a network of cushioning conversion machines with a supervisory controller to be an aspect of their invention, as stated at page 11, lines 9 to 12, if such a network were already known in the prior art.

Accordingly, rejection (1) will not be sustained.

Rejection (2)

With regard to claims 1, 4 to 9 and 14, rejected in rejection (1), the examiner states that this rejection applies to those claims if the AAPA is not interpreted as defining a plurality of machines each having a controller in communication with a supervisory controller.

Each of the secondary references, Groenteman, Kawamura, Dietrich and Lobiondo, discloses a control network.⁴ After

⁴ Our consideration of these references has not been facilitated by the fact that on pages 5 and 6 of the answer, the examiner describes each of them in virtually identical language. Also, the examiner does not explain how the combination of the AAPA and each of these references meets the particular limitations of the various claims, even though appellants argue many of the claims separately on pages 19 to 21 of the brief.

consideration of the arguments presented by appellants and by the examiner, we do not consider that any of these secondary references, in combination with the AAPA, would suggest to one of ordinary skill a cushioning conversion network or method of allocating production as recited in the rejected claims.

The Groenteman and Kawamura patents appear to be the most pertinent to the rejection. In Groenteman, a network comprising a number of copying machines, each having a processor 12, transmits status information, e.g., malfunction indications

(col. 1, line 14), to a base processor which analyzes the status information and communicates appropriate corrective action back to the appropriate copying machine (col. 2, lines 59 to 63;

col. 3, lines 1 to 8). Kawamura discloses a lathe having two heads, each with a controller 10, 20, connected to bus 1 along with master controller 30. If one controller runs short of its processing ability, part of the operation is transferred to another controller (col. 2, lines 63 to 67). We do not consider that either of these references, or the Dietrich and Lobiondo patents, would teach or suggest to one of ordinary

skill the creation of a network from the multiplicity of cushioning conversion machines, each with its own controller, disclosed by the AAPA. We reach this conclusion because the disclosure of each of the secondary references is specific to a network of a particular type of machine (Groenteman: copiers; Kawamura: lathe heads; Dietrich: machines making a "large, indivisible, or highly customized product" (col. 6, lines 10 and 11), e.g., computers; Lobiondo: printers), rather than being of such a nature as to suggest the provision of a centrally controlled network for a plurality of manufacturing machines, generically. Any suggestion of providing such a network for a plurality of cushioning conversion machines would thus appear to be derived not from the prior art, but from improper hindsight based on appellants' own disclosure.

Rejection (2) therefore will not be sustained.

Rejection (3)

The additional references applied in rejection (3) do not supply the deficiencies noted with regard to rejection (2), and rejection (3) likewise will not be sustained.

Conclusion

The examiner's decision to reject claims 1 to 22 is

Appeal No. 1999-2099
Application No. 08/475,627

reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	
)	BOARD OF PATENT
HARRISON E. MCCANDLISH)	
Senior Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
WILLIAM F. PATE, III)	
Administrative Patent Judge)	

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Appeal No. 1999-2099
Application No. 08/475,627

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